

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 378

Introduced by Assembly Member Chu

February 11, 2005

An act to amend *Section 52 of the Civil Code, and to amend Section 338 of the Code of Civil Procedure*, relating to protected classes.

LEGISLATIVE COUNSEL'S DIGEST

AB 378, as amended, Chu. Statute of limitation: protected classes.

Existing law provides that all persons within this jurisdiction have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because another person perceives them to have any of those characteristics. *A civil penalty of \$25,000 may be awarded to the person denied this right in any action brought by the aggrieved party, the Attorney General, a district attorney, or a city attorney.*

Existing law *further* authorizes an Attorney General, district attorney, ~~or city attorney, or an aggrieved individual~~ to bring a civil action against any person who interferes ~~by threats, intimidation, or coercion,~~ with the exercise or enjoyment of an individual's rights *secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state*, as specified.

Existing law generally prescribes a one-year statute of limitation for the commencement of any action brought upon a statute for a penalty or forfeiture, and 3 years for an action upon a liability created by statute.

This bill would provide for a 3-year statute of limitation for the commencement of any action brought pursuant to the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 52 of the Civil Code is amended to read:*

2 52. (a) Whoever denies, aids or incites a denial, or makes any
3 discrimination or distinction contrary to Section 51, 51.5, or 51.6,
4 is liable for each and every offense for the actual damages, and
5 any amount that may be determined by a jury, or a court sitting
6 without a jury, up to a maximum of three times the amount of
7 actual damage but in no case less than four thousand dollars
8 (\$4,000), and any attorney's fees that may be determined by the
9 court in addition thereto, suffered by any person denied the rights
10 provided in Section 51, 51.5, or 51.6.

11 (b) Whoever denies the right provided by Section 51.7 or 51.9,
12 or aids, incites, or conspires in that denial, is liable for each and
13 every offense for the actual damages suffered by any person
14 denied that right and, in addition, the following:

15 (1) An amount to be determined by a jury, or a court sitting
16 without a jury, for exemplary damages.

17 (2) A civil penalty of twenty-five thousand dollars (\$25,000)
18 to be awarded to the person denied the right provided by Section
19 51.7 in any action brought by the person denied the right, or by
20 the Attorney General, a district attorney, or a city attorney. *An*
21 *action for that penalty shall be commenced within three years of*
22 *the alleged practice.*

23 (3) Attorney's fees as may be determined by the court.

24 (c) Whenever there is reasonable cause to believe that any
25 person or group of persons is engaged in conduct of resistance to
26 the full enjoyment of any of the rights described in this section,
27 and that conduct is of that nature and is intended to deny the full
28 exercise of those rights, the Attorney General, any district
29 attorney or city attorney, or any person aggrieved by the conduct
30 may bring a civil action in the appropriate court by filing with it
31 a complaint. The complaint shall contain the following:

1 (1) The signature of the officer, or, in his or her absence, the
2 individual acting on behalf of the officer, or the signature of the
3 person aggrieved.

4 (2) The facts pertaining to the conduct.

5 (3) A request for preventive relief, including an application for
6 a permanent or temporary injunction, restraining order, or other
7 order against the person or persons responsible for the conduct,
8 as the complainant deems necessary to ensure the full enjoyment
9 of the rights described in this section.

10 (d) Whenever an action has been commenced in any court
11 seeking relief from the denial of equal protection of the laws
12 under the Fourteenth Amendment to the Constitution of the
13 United States on account of race, color, religion, sex, national
14 origin, or disability, the Attorney General or any district attorney
15 or city attorney for or in the name of the people of the State of
16 California may intervene in the action upon timely application if
17 the Attorney General or any district attorney or city attorney
18 certifies that the case is of general public importance. In that
19 action, the people of the State of California shall be entitled to
20 the same relief as if it had instituted the action.

21 (e) Actions brought pursuant to this section are independent of
22 any other actions, remedies, or procedures that may be available
23 to an aggrieved party pursuant to any other law.

24 (f) Any person claiming to be aggrieved by an alleged
25 unlawful practice in violation of Section 51 or 51.7 may also file
26 a verified complaint with the Department of Fair Employment
27 and Housing pursuant to Section 12948 of the Government Code.

28 (g) This section does not require any construction, alteration,
29 repair, structural or otherwise, or modification of any sort
30 whatsoever, beyond that construction, alteration, repair, or
31 modification that is otherwise required by other provisions of
32 law, to any new or existing establishment, facility, building,
33 improvement, or any other structure, nor does this section
34 augment, restrict, or alter in any way the authority of the State
35 Architect to require construction, alteration, repair, or
36 modifications that the State Architect otherwise possesses
37 pursuant to other laws.

38 (h) For the purposes of this section, “actual damages” means
39 special and general damages. This subdivision is declaratory of
40 existing law.

1 ~~SECTION 1.~~

2 *SEC. 2.* Section 338 of the Code of Civil Procedure is
3 amended to read:

4 338. Within three years:

5 (a) An action upon a liability created by statute, other than a
6 penalty or forfeiture.

7 (b) An action for trespass upon or injury to real property.

8 (c) An action for taking, detaining, or injuring any goods or
9 chattels, including actions for the specific recovery of personal
10 property. The cause of action in the case of theft, as defined in
11 Section 484 of the Penal Code, of any article of historical,
12 interpretive, scientific, or artistic significance is not deemed to
13 have accrued until the discovery of the whereabouts of the article
14 by the aggrieved party, his or her agent, or the law enforcement
15 agency which originally investigated the theft.

16 (d) An action for relief on the ground of fraud or mistake. The
17 cause of action in that case is not to be deemed to have accrued
18 until the discovery, by the aggrieved party, of the facts
19 constituting the fraud or mistake.

20 (e) An action upon a bond of a public official except any cause
21 of action based on fraud or embezzlement is not to be deemed to
22 have accrued until the discovery, by the aggrieved party or his or
23 her agent, of the facts constituting the cause of action upon the
24 bond.

25 (f) An action against a notary public on his or her bond or in
26 his or her official capacity except that any cause of action based
27 on malfeasance or misfeasance is not deemed to have accrued
28 until discovery, by the aggrieved party or his or her agent, of the
29 facts constituting the cause of action; provided, that any action
30 based on malfeasance or misfeasance shall be commenced within
31 one year from discovery, by the aggrieved party or his or her
32 agent, of the facts constituting the cause of action or within three
33 years from the performance of the notarial act giving rise to the
34 action, whichever is later; and provided further, that any action
35 against a notary public on his or her bond or in his or her official
36 capacity shall be commenced within six years.

37 (g) An action for slander of title to real property.

38 (h) An action commenced under Section 17536 of the
39 Business and Professions Code. The cause of action in that case
40 shall not be deemed to have accrued until the discovery by the

1 aggrieved party, the Attorney General, the district attorney, the
2 county counsel, the city prosecutor, or the city attorney of the
3 facts constituting grounds for commencing such an action.

4 (i) An action commenced under the Porter-Cologne Water
5 Quality Control Act (Division 7 (commencing with Section
6 13000) of the Water Code). The cause of action in that case shall
7 not be deemed to have accrued until the discovery by the State
8 Water Resources Control Board or a regional water quality
9 control board of the facts constituting grounds for commencing
10 actions under their jurisdiction.

11 (j) An action to recover for physical damage to private
12 property under Section 19 of Article I of the California
13 Constitution.

14 (k) An action commenced under Division 26 (commencing
15 with Section 39000) of the Health and Safety Code. These causes
16 of action shall not be deemed to have accrued until the discovery
17 by the State Air Resources Board or by a district, as defined in
18 Section 39025 of the Health and Safety Code, of the facts
19 constituting grounds for commencing the action under its
20 jurisdiction.

21 (l) An action commenced under Section 1603.1 or 5650.1 of
22 the Fish and Game Code. These causes of action shall not be
23 deemed to have accrued until discovery by the agency bringing
24 the action of the facts constituting the grounds for commencing
25 the action.

26 (m) An action challenging the validity of the levy upon a
27 parcel of a special tax levied by a local agency on a per parcel
28 basis.

29 (n) An action commenced under Section 51.7 or 52.1 of the
30 Civil Code.